



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** June 19, 2006

Approved:

Date:

6/19/06

**COUNCIL DISTRICT:** Citywide  
**SNI AREAS:** All

**SUBJECT: AN ORDINANCE TO EXTEND THE TIME OF AN EXISTING PILOT PROGRAM FROM THE END OF JULY TO OCTOBER 31, 2006 TO ALLOW SIDEWALK CAFÉ PERMITS TO BE ISSUED DURING THIS TIME PERIOD TO BUSINESSES THAT SERVE ALCOHOL AND HAVE A PUBLIC ENTERTAINMENT PERMIT.**

## RECOMMENDATION

Planning staff recommends that the City Council adopt the proposed ordinance to extend the time of an existing pilot program from the end of July to October 31, 2006, to allow sidewalk café permits to be issued during this time period to businesses that serve alcohol sales and have a public entertainment permit.

## OUTCOME

The proposed ordinance amendment would extend the time of an existing pilot program to allow sidewalk café permits in conjunction with alcohol sales and public entertainment through October 31, 2006.

## BACKGROUND

In June 2005, the City Council adopted an ordinance to establish a pilot program to allow sidewalk café permits to be issued to businesses that serve alcohol and which also have a public entertainment permit. The ordinance change was in response to downtown restaurant owners who wish to have outdoor seating and serve alcohol, and who also hold a valid entertainment

June 19, 2006

**SUBJECT: Pilot Sidewalk Café Permit Program Extension**

permit issued by the Police Department under Title 6 of the Municipal Code. This change was intended to make restaurants more attractive and more viable to the general public, and to add vibrancy to the streetscape, especially in the downtown area.

As of June 15, 2006, no sidewalk café permits have been issued under the pilot program to any restaurants, which both serve alcohol and hold a valid entertainment permit. Several such permits are currently pending and under review by Planning staff. Redevelopment Agency staff have also indicated that they have been fielding multiple inquiries from Downtown businesses regarding the process for sidewalk café permits, particularly in light of the 2006 San Jose Grand Prix scheduled for the end of July, and have established a program to assist some restaurants in the filing of their applications, including assistance with fees.

**ANALYSIS**

The ordinance establishing the pilot program was intended to facilitate approval of sidewalk cafés at restaurants with both alcohol service and entertainment for a discrete time period to allow both the Planning and the Police departments, and the Redevelopment Agency to monitor their operation and assess any problems over several months. This tracking information could then be used to refine the conditions contained in the existing pilot program ordinance, to be incorporated into the development of a possible permanent ordinance addressing sidewalk cafés at these types of facilities. Without any sidewalk cafés yet approved under the pilot program, staff has no information on the level of success or difficulty that may be experienced, and would benefit from an extension in the time period of the pilot to complete processing of those applications on file, and those which may be submitted ahead of the San Jose Grand Prix.

Although staff can continue to process sidewalk café permits under the existing pilot program ordinance through the end of July, without approval of this ordinance to extend the time period of the pilot program, those sidewalk café permits would sunset with the expiration of the existing ordinance at the end of July 2006. New applications could not be submitted and could not be reapproved unless the City Council decided to act on a permanent ordinance to allow sidewalk cafés for restaurants with alcohol service and entertainment permits. The earliest date such a permanent ordinance could be brought forward to the City Council would be at the August 8, 2006 hearing, and even with a streamlined process, the resulting effective date of such an ordinance would be in mid-September. In this scenario, between August 1<sup>st</sup> and mid-September, no sidewalk cafés could be permitted for restaurants with alcohol service and entertainment permits.

The ordinance establishing the pilot program includes special language regarding hours of operation for sidewalk cafes in conjunction with businesses that have an entertainment permit. For businesses that have an entertainment permit, the hours of operation of the sidewalk café would be limited to the hours of operation of the business, or until midnight, whichever is earlier. Generally, outside of the Downtown, restaurants with valid entertainment permits would operate until 10 p.m. Businesses with Dance Hall permits are still not allowed to obtain sidewalk café permits under the pilot program.

**ALTERNATIVES**

Not applicable.

**PUBLIC OUTREACH**

Not applicable.

**COORDINATION**

Preparation of the proposed ordinance has been coordinated with the City Attorney's Office, the Redevelopment Agency, and the Police Department. Transmittal of the draft ordinance language is being sent by the City Attorney's Office under separate cover.

**COST IMPLICATIONS**

Not applicable.

**BUDGET REFERENCE**

Not applicable.

**CEQA**

The proposed ordinance together with this proposed extension of time, was found exempt from CEQA per Section 15305 under File No. PP05-099.

A handwritten signature in black ink, appearing to read "Joseph Horwedel", is written over the typed name and title.

Joseph Horwedel, Acting Director  
Planning, Building and Code Enforcement

For questions, please contact Susan Walton, Principal Planner at (408) 535-7800.